D.B.CIVIL SPECIAL APPEAL (W) NO. 1429/2006

State of Rajasthan & anr.
v.
Murari Lal Mishra & ors.

Date of order : 09.05.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri H.V.Nandvana, Dy. Govt. Advocate
Shri Rinesh Gupta for respondent no.1

This special appeal is directed against the order of the learned Single Judge dated 20.3.2006 allowing the writ petition, S.B.Civil Writ Petition no. 6832/1992, of the respondent. By the order impugned, the learned Single Judge directed the appellants to award five bonus marks to the respondence on account of residence of rural area.

The dispute relates to appointment on the post of Teacher Gr.III. In terms of the relevant circular the candidates were entitled to five bonus marks for residence in rural area. The case of the appellant State is that the circular so far as grant of bonus marks for residence has been held to be ultra vires by this Court as well as the Supreme Court vide judgment in Kailash Chand Sharma v. State of Rajasthan & ors, (2002) 6 SCC 562, and therefore, the learned Single Judge committed error in allowing bonus

marks to the respondent.

The submission appears to be attractive but can not be accepted. It is not in dispute that the judgment striking down the circular allowing bonus marks was made prospective and the Supreme Court saved the appointments already made. The operative part of the judgment of the Supreme Court may be quoted as under :

> "Accordingly we direct :
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> 1. The claims of the writ petitioners should be considered afresh in the light of this judgment vis-a-vis the candidates appointed on or after 18.11.1999 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 18.11.1999.
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> 2. The appointments made up to 17.11.1999 need not be reopened and reconsidered in the light of the law laid down in this judgment.
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> 3. ...."

If appointments already made upto 17.11.1999 were saved, the question which arises for consideration is whether the

respondent should be denied the bonus marks. It is not in dispute that if the respondent had been allowed bonus marks, he too would have been appointed. We are of the view that a large number of candidates having been appointed by giving them benefit of bonus marks on the basis of rural residence it would not be fair to deny the benefit of appointment to the respondent.

Counsel for the State then submitted that the respondent should have filed certificate of the Sarpanch because the Sarpanch alone is competent to certify the factum of residence. In the instant case, it was stated, the certificate had been issued by the Assistant Collector. We find no substance in this contention either. The appellants do not dispute the case of the respondent about residence of rural area and if that is so, the only question is whether the certificate issued by the Assistant Collector should have been rejected on the ground that as per the circular Sarpanch alone was competent. The circular has not been brought on record but we are of the view that in any view of the matter, the certificate of Assistant Collector should have greater value, for, certificates are issued by Collector/Assistant Collector after obtaining reports of the local field officials like patwari. Such report should be given more credence than that of the Sarpanch.

The certificate in question therefore cannot be rejected simply on the ground that it had been issued by the Assistant Collector.

In the above premises, we find no error in the order of the learned Single Judge upholding the claim of the respondent of awarding bonus marks on the basis of residence of rural area. The appeal is accordingly dismissed.

mathur/ (MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.